

REMARKS

The Office Action mailed October 6, 2004 required applicants to elect one group of claims under 35 U.S.C. 121 for further prosecution from:

Group I, claims 1-20, 23, 24 and 26-33;

Group II, claims 21, 22 and 25; and

Group III, claims 34-39.

Applicants elect, **with traverse**, Group I corresponding to claims 1-20, 23, 24 and 26-33, for further prosecution in the present application.

Groups I, II and III are related to each other in that Groups I and III are each directed to a body part immobilization apparatus and Group II is directed to a side block attachable to a base for forming a body part immobilization apparatus. If the restriction requirement is nonetheless maintained, applicants reserve the right of rejoinder of the subject matter of the non-elected claims or the right to pursue canceled subject matter in a continuation and/or divisional application.

It is respectfully submitted that examination of all of the claims pending in this application is in the spirit of the right of rejoinder such that the restriction requirement should be reconsidered, and reformulated or withdrawn entirely.

It would seem, that to require the filing of a separate divisional application(s) directed to Group I and Group III claims will result in the very same search being repeated, but at a later date(s). It is submitted that the duplicate search(es) would be quite inefficient to the operation of the Patent and Trademark Office. Furthermore, the same Examiner may be in charge of the

divisional case; but since the divisional application will be examined at a much later date, the Examiner will have to conduct a duplicate, redundant search at the time he examines the divisional application. Alternatively, if a different Examiner(s) were assigned to the divisional application, a significant loss of PTO efficiency would be incurred as a result of the examination of the divisional application(s).

Thus, the only logical outcome of the present restriction requirement would be to delay the examination of the Group III claims, resulting in inefficiencies and unnecessary expenditures by Applicants and the PTO, and since a single search can be performed for the claims without any significant burden on the Office, it is respectfully requested that this restriction requirement be withdrawn.

In this regard the Examiner is respectfully invited to consider the extreme prejudice to Applicants by the present restriction requirement, including: the necessity of having to pay an additional filing fee to the PTO and others for prosecuting each additional application; the loss of patent term for the Group I and Group III claims if Applicants must now file a separate application at this time directed thereto due to prosecution of such application beginning far later than prosecution to date in the present application; and to the post GATT 20 year patent term calculating from the earliest U.S. filing date.

Additionally, the Examiner is respectfully invited to review the text of MPEP §803, which in part states (with emphasis) that:

If the search and examination of an entire application can be **made without serious burden, the examiner must examine it on the merits**, even though it includes claims to distinct or independent inventions.

The results of the present restriction requirement are inefficiencies and unnecessary expenditures by both the Applicants and the PTO, and extreme prejudice to Applicants.

Therefore, the restriction has not been shown to be proper, especially since the requisite showing of serious burden has not been made in the Office Action, there are relationships between Group II claims and Groups I and III claims. All of these militate against restriction.

Hence, it is evident that there is unity of invention and allowable subject matter in the pending claims, and in view of the foregoing, reconsideration and withdrawal of the requirement for restriction and favorable consideration of all of the claims on the merits are respectfully requested.

Thus, if the restriction requirement is nonetheless maintained, applicants reserve the right of rejoinder or the right to pursue canceled subject matter in a continuation and/or a divisional application(s) as mandated by the MPEP.

The Office Action also required applicants to elect a single disclosed species for prosecution under 35 U.S.C. 121 if no generic claim is finally held allowable. The species were listed as follows:

Species I, Figs. 1-13, 19A-19C and 20A-20D on which it is believed Claims 1-16 and 33 read;

Species II, Figs. 14 and 15 on which it is believed Claims 23-25 and 33 read;

Species III, Figs. 16 and 17 on which it is believed Claims 17-22 and 26-33 read;

Species IV, Figs. 18A and 18B on which it is believed Claims 17-22 and 33 read;

Species V, Fig. 21 on which it is believed Claims 33-39 read; and

Species VI, Fig. 22 on which it is believed Claims 26-33 read.

The Examiner listed claim 33 as generic.

Applicants provisionally elect Species I corresponding to Figs. 1-13, 19A-19C and 20A-20D, on which it is believed claims 1-16 and 33 read, for further prosecution, and reserve the right to prosecute all claims if at least one generic claim is held allowable. Applicants also reserve the right to pursue claims directed to any patentably distinct species in a continuation and/or a divisional application as mandated by the MPEP.

Any additional fee occasioned by this paper, or any overpayment in those fees, may be charged or credited to Deposit Account No. 50-0320.

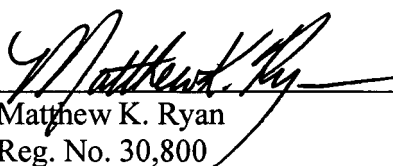
Early and favorable examination of all of the claims on the merits is respectfully requested.

In view of the foregoing, reconsideration and withdrawal of the requirement for restriction and favorable reconsideration of Groups I, II and III claims on the merits are respectfully requested.

Respectfully submitted,

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